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**BEFORE THE  
FEDERAL MARITIME COMMISSION**

22 MAY 22 PM 1999

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMMISSION

PETRA PET, INC. (a/k/a PETRAPPORT)

Complainant

vs

PANDA LOGISTICS LIMITED,  
PANDA LOGISTICS CO., LTD. (f/k/a PANDA  
INT'L TRANSPORTATION CO., LTD.),  
RDM SOLUTIONS, INC.

Respondents

FMC Docket No. 11-14

**PROPOSED FINDINGS OF FACT**

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Counsel for Petra Pet, Inc.

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

PETRA PET, INC. (a/k/a PETRAPPORT)	)	
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Complainant	)	FMC Docket No. 11-14
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vs.	)	
	)	
PANDA LOGISTICS LIMITED,	)	
PANDA LOGISTICS CO., LTD. (f/k/a PANDA	)	
INT'L TRANSPORTATION CO., LTD.),	)	
RDM SOLUTIONS, INC.	)	
	)	
Respondents	)	

**PROPOSED FINDINGS OF FACT**

**I. THE BUSINESS RELATIONSHIP BETWEEN RDM SOLUTIONS AND PANDA GLOBAL.**

1. As demonstrated by the representative shipping documents Petra Pet is in the business of purchasing pet treats from vendors in China and importing those goods into the United States. Documents provided by Complainant: PETRA-04198-04210; 02607-02612; 08052-08061.<sup>1</sup>

2. RDM Solutions, Inc. ("RDM") is owned by Mario Ruiz. Document provided by Respondent: PANDA000057.

3. Mario Ruiz has provided international freight and logistics services to Petra Pet, Inc. a/k/a Petrapport ("Petra Pet" or "Petrapport") since at least 2003. Document provided by Respondent: PANDA000017, February 28, 2003, 10:06 AM.

4. On or about September 2005 Mario Ruiz left his employer at that time, Amber Worldwide, to run a new logistics company he formed, Worldport Logistics

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<sup>1</sup> Each numbered paragraph corresponds to an individual tab in the accompanying exhibit binder. To the extent that a particular exhibit is referenced in more than one paragraph, then that exhibit and its initial tab number are referenced in the later paragraph as well.

("Worldport"). Document provided by Respondent: PANDA000018, August 30, 2005, 11:44 AM.

5. Since at least 2003 Mario Ruiz sought to use the services of a company in the Panda Logistics Group to provide logistics services to Petra Pet. Respondent's response to Complainant's Interrogatory No. 10.

6. Panda Logistics Limited (FMC Org. No. 017098) and Panda Logistics Co., Ltd. (FMC Org. No. 020182) (collectively "Panda Global") are each a Non-Vessel Ocean Common Carrier ("NVOCC") and a non-U.S.-based Ocean Transportation Intermediary ("OTI") within the meaning of 46 U.S.C. § 40102(16)(19). Respondent's Verified Answer and Affirmative Defenses to Complaint, pp. 1-2.

7. Since at least 2003 Mario Ruiz working with Betty Sun in Panda Global cooperated to provide freight services to Petraport. See Tab 3 herein, Document provided by Respondent: PANDA000017, February 28, 2003.

8. Shortly before Mario Ruiz left Amber Worldwide in September 2005, Betty Sun became aware that Mario Ruiz had formed his new company and asked Mr. Ruiz "What services can WORLDPORT LOGISTICS offer? Maybe you can send me a profile?" Document provided by Respondent: PANDA000018.

9. In response, Mario Ruiz advised Betty Sun that "Worldport will be able to provide you with all of the services expected from (sic) a Freight forwarder and partner in the U.S. \*\*\* Trucking all over the U.S. and count with agent offices in the U.S. and all over the world. Your company being one of them." See Tab 8 herein, Document provided by Respondent: PANDA000018, August 30, 2005, 11:44 AM.

10. In 2006, Worldport (Mario Ruiz) fell behind on a number of freight payments and was not able to obtain bills of lading causing Mr. Ruiz to email Betty Sun stating "As I mentioned on my last payment I will get up to date by the end of the month. \*\*\* I will keep paying you also the week after. I can not really understand why you are delaying house bills to them." Petra Pet was not copied on this correspondence. Document provided by Respondent: Panda000083, August 22, 2006.

11. In 2007 Mario Ruiz opened RDM Solutions in order to comply with Federal Maritime Commission ("FMC") requirements as a FMC licensed NVOCC. Document provided by Respondent: Panda000057.

12. Other than Petra Pet's relationship with RDM Solutions acting as an NVOCC providing international freight and logistics services to Petra Pet, Petra Pet has no business relationship with RDM Solutions. Documents provided by Complainant: PETRA-07199-07200, Email from Dean Triandafellos, January 22, 2011, 12:21 AM.

13. RDM Solutions charged Petra Pet for ocean freight by billing Petra Pet's customs broker, Keuhne + Nagel Inc. ("Kuehne + Nagel"). Complainant has supplied numerous arrival notices confirming that RDM Solutions billed Kuehne + Nagel for ocean freight. See representative arrival notices and corresponding Panda Global bills of lading PETRA-04206-04207; 02609-02610.<sup>2</sup>

14. In 2008 Mario Ruiz advised a number of companies, including Panda Global through an email to Betty Sun, that Mario Ruiz should be contacted through his RDM Solutions email account (m.ruiz@rdmsolution.com). Document provided by Respondent: PANDA000015.

15. In response to RDM Solutions' inquiry on March 6, 2008 asking whether RDM Solutions "would be able to coload with you" on shipments for Petra Pet, Panda Global stated to RDM Solutions that Panda Global required a handling fee of US \$ 80/container "if you coload our contract rates with Hanjin." Documents provided by Respondent: PANDA000028-000029, Emails of March 6, 2008, 6:58 AM and March 6, 2008, 2:49 PM.

16. On April 3, 2008 Panda Global agreed via email that Panda Global and RDM Solutions should provide logistics services to Petra Pet on the following terms:

- Panda Global would ship the goods freight prepaid on a Master Bill of Lading ("MBL");
- The MBL's would be couriered to RDM Solutions weekly;
- Panda Global would provide credit for the freight until 15 days after the vessel arrived at the destination port; and
- Panda Global and RDM Solutions would have a profit sharing arrangement of \$150 per container.

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<sup>2</sup> Petra Pet has produced more than 200 Arrival Notices and corresponding bills of lading reflecting the same consignee (Petra Pet), the same issuer (RDM Solutions) and the same "Bill To" party (Kuehne + Nagel).

Neither Panda Global nor RDM Solutions copied Petra Pet on correspondence concerning the proposed profit sharing arrangement. Document provided by Respondent: PANDA000020, Email of april 3, 2008.

17. From December 10, 2008 through December 15, 2008 RDM Solutions and Panda Global exchanged emails concerning RDM Solutions' overdue and late payments to Panda Global. Petra Pet was not copied on any of those emails. Documents provided by Respondent: PANDA000035 - 000038, Emails of December 10, 2008, 9:47 PM; December 12, 2008, 9:03 PM; December 15, 2008, 7:03 PM.

18. On December 17, 2008 Panda Global notified RDM Solutions that RDM Solutions had accumulated a "huge overdue payment;" indicated that failing to clear up these payments quickly would "cost more times for releasing cargo at your side" and advised RDM Solutions to "follow our agreement strictly." Petra Pet was not copied on this correspondence. Document provided by Respondent: PANDA000034.

19. Despite RDM Solution's financial difficulties, Panda Global and RDM Solutions continued to do business with Panda Global (Panda Int'l Transportation Co., Ltd.; Panda Logistics Co., Ltd.; or Panda Logistics Limited) issuing bills of lading identifying Petra Pet as the consignee; identifying RDM Solutions in the section on the bills of lading for freight; and identifying Petra Pet's customs broker, Kuehne + Nagel, as the "Notify" party. Representative documents provided in Complainant's Verified Complaint, Exhibit 1.<sup>3</sup>

20. Panda Global issued debit notes directly to RDM Solutions corresponding to Panda Global's bills of lading, which identified exact amounts for "ocean freight," "AMS Charges" (i.e., automated manifest systems charges), "Profit Share" and/or "Handling Charge." Representative documents provided by Respondent: PANDA000150-151; 0000130-133.<sup>4</sup>

21. The Panda Global debit notes identifying freight charges, related charges, profit sharing fees and/or handling fees were only sent to RDM Solutions. See Tab 20 herein, PANDA000150, 000130-000133.

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<sup>3</sup> Petra Pet has produced more than 200 bills of lading reflecting the same consignee (Petra Pet), a Panda Global company as the issuer and the same notify party (Kuehne + Nagel).

<sup>4</sup> Panda Global has produced at least 18 debit notes from the Panda Group reflecting the same "Bill to" party (RDM Solutions) referencing ocean freight amounts.

22. In accordance with Panda Global's bills of lading identifying RDM Solutions as the party for freight charges and RDM Solutions' Arrival Notices stating that Kuehne + Nagel should be billed for ocean freight, Kuehne + Nagel made the required ocean freight payments to RDM Solutions by check. Documents provided by Complainant: PETRA-05893; Verified Complaint, Exhibit 7<sup>5</sup>.

23. RDM Solutions billed Petra Pet directly for logistics and freight forwarding services other than ocean freight (for example, trucking, demurrage, lab tests, etc.) and Petra Pet paid RDM Solutions directly by check for those services. Representative documents provided by Complainant: PETRA-10189-10194.<sup>6</sup>

24. Neither the RDM Solutions Arrival Notices billed to Kuehne + Nagel with ocean freight amounts nor the RDM Solutions invoices to Petra Pet for additional freight forwarding and logistics services identified amounts for profit sharing, handling fees or other profits that RDM Solutions earned on Petra Pet shipments. See Arrival Notices in Tab 13 (PETRA-04206, 02609) and RDM Solutions invoice in Tab 23 (Petra-10190).

25. In preparation for a trip to China in April 2009 by Steven Mendal, an owner of Petra Pet, to meet with personnel from Panda Global, Mario Ruiz sent Mr. Mendal an email stating "I have spoken to panda in china last night they have your cell phone number and will be in contact with you asap. The people that will meet you will be: Betty Sun, she is the office manager of the Shanghai office. She was station in Beijing before and has been with RDM since the beginning. She is fully aware of the goings of your business." Documents provided by Respondent: PANDA000088-000089.

26. Further to those anticipated discussions with Mr. Mendal, RDM Solutions emailed Panda Global stating "NO RATES TO HIM PLEASE!!!!" Documents provided by Respondent: PANDA000090-000091.

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<sup>5</sup> In certain instances Petra Pet's response to Panda Global's email consisted of a reply immediately after the statement in the Panda Global email. For example, in response to the December 13, 2010 email from Panda Global (Liyen) stating "Pls see attached SOA ... totally USD250330.03 in Panda Global favor" (copy in Tab 22, Petra-05895) Petra Pet (Patty Deavila) responded on December 14, 2010 stating "As per yr attachment we already paid to your agent some of the cargos on your SOA sheet...."

<sup>6</sup> Petra Pet has produced over 25 checks from Petra Pet to RDM Solutions paying against RDM Solutions invoices for services related to the international transport of the goods.

27. Panda Global's payment difficulties with RDM Solutions continued and on June 30, 2009 Panda Global emailed RDM Solutions a list of invoices with the comment "Too many invoices are over-due long time. Below invoices need you to pay URGENTLY." Petra Pet was not copied on this correspondence. Document provided by Respondent: PANDA000003.

28. Panda Global's payment difficulties with RDM Solutions continued and on July 26, 2010 Panda Global sent Petra Pet an email concerning payments for freight charges commenting to Petra Pet "As you are our VIP client, we has agreed with RDM for payment term, which is different from the agreements with other clients." Document provided by Complainant: PETRA-05974-05975.

## **II. THE DISPUTE BETWEEN PETRA PET AND PANDA GLOBAL.**

29. Due to the worsening financial situation between RDM Solutions and Panda Global, Panda Global sent Mario Ruiz emails on November 9, 2010, November 15, 2010, November 19, 2010, November 22, 2010 and November 29, 2010 noting accrual of overdue amounts eventually totaling \$110,630.03 and requesting urgent payment. Petra pet was not copied on this correspondence. Documents provided by Respondent: PANDA000024-000026 .

30. Petrapport notified RDM Solutions (Mario Ruiz) on November 24, 2010 that certain freight from China had not been released and that Petrapport was facing a possible loss of customers due to the delay. Verified Complaint, Exhibit 2.

31. On November 30, 2010 Panda Global acknowledged to Petra Pet that its accountant was holding the original bills of lading covering Petra Pet shipments due to Panda Global's financial difficulties with RDM Solutions. Document provided by Complainant: PETRA-05930.

32. In response Petra Pet stated to Panda Global on December 1, 2010 that "All freight for those containers are been paid by our broker to him." ("Him" in this email refers to Mario Ruiz.) Petra Pet further noted to Panda Global "I am very surprised you did not advice us on this problem, now it comes to the point that we have been hurt...." Verified Complaint, Exhibit 3.

33. On December 3, 2010 Panda Global sent an email to RDM stating "RDM owes Panda Global totally USD129,686.93;" providing RDM a Statement Of Accounts ("SOA") detailing those charges and asking RDM "[w]hen will you pay all the overdue invoices to us?" Verified Complaint, Exhibit 5.

34. On December 13, 2010 Panda Global stated to Petra Pet that Panda Global never received payments from RDM Solutions totaling \$173,593.56 (\$144,455.53 + \$29,142.30) for freight amounts owing and claiming that the total amount owing Panda Global was \$250,330.03. Tab 22 (Verified Complaint, Exhibit 7).

35. In response to Panda Global's claims, Petra Pet responded that Petra Pet had already paid RDM Solutions for a certain amount of the freight charges claimed; that Petra Pet had cashed checks to prove payment; and that Panda Global's payment difficulties with RDM Solutions had nothing to do with Petra Pet. See Tab 22 (Verified Complaint, Exhibit 7).

36. As a result of Mario Ruiz's failure to pay certain freight charges owing to Panda Global, Panda Global refused to provide Petra Pet with documents for goods that had arrived at the port and suggested that Petrapport should make a partial payment to Panda Global of \$100,000 within 3 days in order to obtain possession of that cargo. December 17, 2010 email from Panda Global General Manager provided by Complainant: PETRA-05939-05940.

37. In that email Panda Global's General Manager (Frank Guo) also stated in to Petrapport "we all know you are victim, you are innocent. You have no fault." Documents provided by Complainant: See Tab 36 (PETRA-05939-05940).

38. Petra Pet consulted its customs broker, Kuehne + Nagel, as to how to handle the situation with Panda Global and in response Kuehne + Nagle stated "First, RDM was contracted by Panda as their agent, therefore, if you Have paid RDM and can prove it (we will provide cashed checks) then Panda needs to go after RDM not Petra." See Tab 22 (Document provided by Complainant: PETRA-05893).

39. On December 21, 2010 Petrapport sent Panda Global a formal proposal to settle the dispute including an agreement to be responsible for freight charges covering all goods actually shipped wherein the freight charges had not yet been paid, an amount totaling \$66,156.80. Document provided by Complainant: PETRA-05967-05968.



40. In response, Panda Global's General Manager was optimistic they could resolve the issues, but then raised numerous ancillary questions such that the anticipated agreement and payment of \$66,156.80 was never concluded. Document provided by Complainant: PETRA-04543-04545.

41. Petrapport, through counsel in China, also contacted Panda Global, but without result. Document provided by Complainant: PETRA-04518.

42. On January 4, 2010 Panda Global issued a Statement of Accounts to Petrapport identifying 17 bills of lading covering 24 containers that would be released in exchange for \$91,744.80. Verified Complaint, Exhibit 9.

43. Since Petrapport's cargo at the U.S. ports was accruing storage and demurrage and Petrapport was not able to make certain deliveries due to inventory shortages, Petrapport paid Panda Global the \$91,744.80 demanded through Petrapport's vendor in China (Tianjin Everfun Pet Product Co.) ("Everfun") serving as Petrapport's agent. Due to exchange rates, Petrapport wired \$94,381.93 to Everfun to cover the freight payments in question. See Tab 42 (Verified Complaint, Exhibit 9).

44. Petrapport's customs broker had previously paid for the three shipments in Panda Global's Statement of Accounts with the reference "Hanjin need only confirm" the freight amounts owing (total \$963.80) and as such, requested only warehousing and demurrage charges in order to release those goods. Document provided by Complainant: PETRA-04629.

45. Due to the delays caused by Panda Global's failure to provide documents, Petrapport was required to pay an additional \$29,784 to the U.S. ports in demurrage charges. See schedule prepared by the ocean carrier (Hanjin Shipping Co. Ltd.) ("Hanjin") detailing demurrage charges. Verified Complaint, Exhibit 10.

46. After paying Panda Global \$91,744.80 in January 2011, Petrapport believed that it had paid Panda Global for all but seven containers believed to be on the water since the four bills of lading for those containers were dated December 18, 2010. Verified Complaint Exhibit 11.

47. Petrapport followed up on the arrival of those containers and subsequently learned on that while the containers had in fact shipped from China to the U.S. via Pusan,

Korea, Panda Global stopped the containers in Korea and had those containers returned to China. Document provided by Respondent: Panda000048, Email February 22, 2008.

48. Since Petrapport had paid the manufacturers in China approximately \$519,000 for the goods covered under the seven containers diverted back to China, those containers had substantial worth to Petrapport. Verified Complaint, P. 8.

49. Hanjin confirmed that the freight charges associated with the seven containers amounted to \$23,400. Verified Complaint, Exhibit 12.

50. In March 2011 Panda Global demanded RMB 1006680.84 to re-export the seven diverted containers to the United States and Petra Pet agreed to that amount paying the additional RMB 1,006,680.84 (USD 153,926.73) demanded. Document provided by Respondent: Panda000001-000002; Verified Complaint, Exhibit 13.

51. Since Panda Global refused to permit those seven containers to ship until Petrapport paid an additional \$153,926.73, Panda Global forced Petrapport to pay an additional \$130,526.73 ( $\$153,926.73 - \$23,400 = \$130,526.73$ ) to receive those seven containers. See Tab 49 (Verified Complaint, Exhibit 12) substantiating the \$23,400 and Tab 50 (Panda 000001-000002; Verified Complaint Exhibit 13) substantiating the \$153,926.73.

52. In addition to the amount paid to Panda Global, Petrapport was required to pay an additional \$27,932.65 to the Chinese authorities via Hanjin for demurrage and storage costs. Verified Complaint, Exhibit 14.

53. Panda Global also required Petrapport to pay an additional \$6,170 to Panda Global to cover miscellaneous charges on the seven containers diverted back to China. Verified Complaint, Exhibit 15.

54. On May 20, 2011 Panda Global sent Petrapport a debit note for additional miscellaneous fees in the amount of \$12,600. Document provided by Complainant: PETRA-05956.

55. Petra Pet questioned those charges and in response Panda Global threatened to return the containers to China again stating "If you want, I can move the containers back to Shanghai port tomorrow. Then you ask K/N or any other big famous forwarder to arrange the movement for you again. Tell me your decision today."


- e. First miscellaneous payment to Panda Global with respect to containers diverted back to China: \$6,170  
See Tab 53 herein.
- f. Second miscellaneous payment to Panda Global with respect to containers diverted back to China: \$12,600  
See Tab 54 and Tab 55 herein

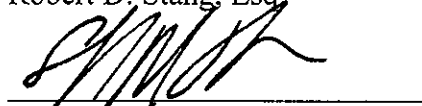
Total damages claimed: \$207,977.18.

**Dated:** Washington, DC  
May 21, 2012

**Respectfully Submitted on Behalf of Petra Pet, Inc.,  
GREENBERG TRAURIG, LLP**

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CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing document and accompanying exhibits to the following addressees at the addresses stated via email transmission and/or by overnight mail on the 21st day of May 2012.

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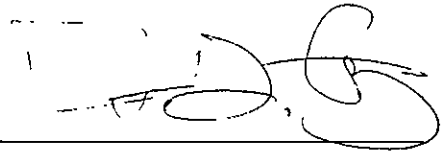
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A handwritten signature in black ink, appearing to read "R. D. Stang", written over a horizontal line.